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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEVADA

RONNI PICHARDO, on behalf of
herself, and all others similarly situated,

Plaintiff,

v.

AMERIGROUP CORPORATION,

Defendant.

Case No.:

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C.
§§ 227 *et seq.***

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Ronni Pichardo (“Plaintiff”) brings this Class Action Complaint for
3 damages, injunctive relief, and any other available legal or equitable remedies,
4 resulting from the illegal actions of Amerigroup Corporation (“Amerigroup” or
5 “Defendant”), in negligently, and/or willfully contacting Plaintiff through telephone
6 calls on Plaintiff’s cellular telephone, in violation of the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227 *et seq.*, (“TCPA”), thereby invading Plaintiff’s
8 privacy. Plaintiff alleges as follows upon personal knowledge as to her own acts and
9 experiences, and, as to all other matters, upon information and belief, including
10 investigation conducted by her attorneys.

NATURE OF THE ACTION

11
12 2. Defendant Amerigroup is a health insurance and managed health care
13 provider. Defendant Amerigroup is the wholly owned subsidiary of Anthem, Inc.

14 3. Defendant Amerigroup provides insurance coverage for millions
15 seniors, people with disabilities, low-income families and other state and federally
16 sponsored beneficiaries, and federal employees, making it the nation’s largest
17 provider of health care for public programs. Defendant Amerigroup operates in
18 Washington, Nevada, Texas, Kansas, Iowa, Louisiana, Tennessee, Georgia, Florida,
19 Maryland and New Jersey.

20 4. In an effort to solicit and generate new business and profits, Defendant
21 Amerigroup repeatedly makes unsolicited phone calls, without consent, to cellular
22 telephones while using automatic telephone dialing equipment having the capacity
23 to store and dial telephone numbers, en masse. As a result, Defendant has repeatedly
24 violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

25 5. The TCPA strictly forbids nuisance calls exactly like those alleged in
26 this Complaint – intrusive phone calls to private cellular phones, placed to numbers
27 obtained without the prior express consent of the call recipients.
28

1 6. Amerigroup's violations caused Plaintiff and members of the Class
2 actual harm, including aggravation, nuisance, and invasion of privacy that
3 necessarily accompanies the receipt of unsolicited phone calls, as well as the
4 violation of their statutory rights.

5 7. Plaintiff seeks an injunction stopping Amerigroup from making
6 unsolicited phone calls, as well as an award of statutory damages under the TCPA,
7 together with costs and reasonable attorneys' fees.

8 **JURISDICTION AND VENUE**

9 8. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff
10 seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when
11 aggregated among a proposed class numbering in the tens of thousands, exceeds the
12 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a
13 national class, which will include class members residing in different states than that
14 of Defendant, providing jurisdiction under 28 U.S.C. § 1332(d)(2)(A). Therefore,
15 both elements of diversity jurisdiction under the Class Action Fairness Act of 2005
16 ("CAFA") are present, and this Court has jurisdiction.

17 9. This Court has federal question subject matter jurisdiction under 28
18 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

19 10. Venue is proper in the United States District Court for the Central
20 District of California pursuant to 28 U.S.C. §§ 1391(b) and 1441(a) because
21 Defendant, at all times herein mentioned, was doing business in Los Vegas, Nevada,
22 and a substantial part of the events giving rise to the claim, mainly Plaintiff's receipt
23 of the phone calls, occurred in this jurisdiction. Venue is additionally proper because
24 Plaintiff resides within this District.

25 **PARTIES**

26 11. Plaintiff Ronni Pichardo is, and at all times mentioned herein was, a
27 resident of the State of Nevada. She is, and at all times mentioned herein was a
28 "person" as defined by 47 U.S.C. § 153 (39).

12. Defendant Amerigroup is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 4425 Corporation Lane, Virginia Beach, Virginia 23462. Amerigroup is a “person” as defined by 47 U.S.C. § 153 (39).

13. Amerigroup actively conducted and continues to conduct telemarketing campaigns for the purpose of soliciting its business.

14. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of Nevada and in the City of Los Vegas, and within this judicial district.

**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (TCPA),
47 U.S.C. §§ 227 *et seq.***

15. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA),¹ in response to a growing number of consumer complaints regarding certain telemarketing practices.

16. The TCPA regulates, among other things, the use of automated telephone equipment, or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.²

17. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

² 47 U.S.C. § 227(b)(1)(A)(iii).

1 privacy than live solicitation calls, and such calls can be costly and inconvenient.
 2 The FCC also recognized that wireless customers are charged for incoming calls
 3 whether they pay in advance or after the minutes are used.³

4 18. The Ninth Circuit has noted that “[e]xpress consent is “[c]onsent that is
 5 clearly and unmistakably stated.” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d
 6 946,955 (9th Cir. 2009).

7 19. As of October 16, 2013, the FCC concluded that the form of “express
 8 consent” required under § 227(b)(1) would thereafter be “prior express written
 9 consent” that is signed and is “sufficient to show that the consumer: (1) received
 10 ‘clear and conspicuous disclosure’ of the consequences of providing the requested
 11 consent . . .; and (2) having received this information, agrees unambiguously to
 12 receive such calls at a telephone number that consumer designates.”⁴

13 20. On July 10, 2015 the FCC released a Declaratory Ruling wherein it was
 14 confirmed that even if a consumer originally did provide “prior express consent” that
 15 caller has a right to revoke consent, using any reasonable method, including orally
 16 or in writing.⁵

21 ³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of*
 22 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (F.C.C. 2003)
 23 (“2003 FCC Order”).

24 ⁴ *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27
 25 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb.
 26 15, 2012).

27 ⁵ *In Rules and Regulations Implementing the Telephone Consumer Protection Act of*
 28 *1991*, Report and Order, 15-72 (FCC July 10, 2015) available at
<https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order> (last
 visited on April 18, 2016)

FACTUAL ALLEGATIONS

21. Amerigroup is one of the nation's largest health insurance and managed health care providers. Faced with the prospect of generating new business and revenues, Amerigroup routinely engages in mass communication practices.

22. Unfortunately, Amerigroup often makes prerecorded calls to cellular telephones without having the necessary prior express consent to do so, all in violation of the TCPA.

23. The TCPA was intended to give individuals control over how and where they receive calls. When Amerigroup makes calls to individual's cellular telephones without their consent, it fails to address or respect the limitations imposed by the TCPA. In doing so, it takes control away from consumers and violates both the spirit and the letter of the TCPA.

24. Plaintiff became a member of Amerigroup in or around 2010 as well as 2014 for high risk pregnancy benefits. After both pregnancies her membership benefits were terminated.

25. However, commencing no later than January of 2016, although she was no longer a member and never provided Amerigroup with consent to call her cellular telephone, Plaintiff began receiving unsolicited phone calls to her wireless phone ending in the number -6228, soliciting membership.

26. Specifically, Plaintiff received calls on January 21, 2016 and February 20, 2016 from the number (800) 600-4441, a number owned and operated by Amerigroup.

27. The calls to Plaintiff's cellular telephone were automated or prerecorded calls.

28. These unsolicited phone calls placed to Plaintiff's wireless telephone were placed via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) and by using "an artificial or prerecorded voice" system as

1 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store
2 numbers randomly or sequentially, and to dial such numbers, to place telephone calls
3 to Plaintiff's cellular telephone.

4 29. The telephone number that Defendant, or its agents, called was assigned
5 to a cellular telephone service for which Plaintiff incurred a charge for incoming
6 calls pursuant to 47 U.S.C. § 227 (b)(1).

7 30. These telephone calls constitute calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

9 31. Plaintiff did not provide Defendant or its agents prior express consent
10 to receive unsolicited phone calls pursuant to 47 U.S.C. § 227 (b)(1)(A).

11 32. These telephone calls by Defendant or its agents therefore violated 47
12 U.S.C. § 227(b)(1).

13 **CLASS ACTION ALLEGATIONS**

14 33. Plaintiff brings this action on behalf of herself and on behalf of all
15 others similarly situated ("the Class").

16 34. Plaintiff represents, and is a member of the Class, consisting of all
17 persons within the United States who: (1) received a telephone call from Defendant
18 or its agents; (2) on his or her cellular telephone number; (3) through the use of any
19 automatic telephone dialing systems or artificial or prerecorded voice system as set
20 forth in 47 U.S.C. § 227(b)(1)(A)(3); and (4) where Defendant has no record of prior
21 express consent for such individual to make such call, within four years prior to the
22 filing of the Complaint through the date of final approval.

23 35. Defendant and its employees or agents are excluded from the Class.

24 36. Plaintiff does not know the exact number of members in the Class, but
25 believes the Class members number in the hundreds of thousands, if not more. Thus,
26 this matter should be certified as a Class action to assist in the expeditious litigation
27 of this matter.

1 37. Plaintiff and members of the Class were harmed by the acts of
2 Defendant in at least the following ways: Defendant, either directly or through its
3 agents, illegally contacted Plaintiff and the Class members via their cellular
4 telephones by using unsolicited telephone calls, thereby causing Plaintiff and the
5 Class members to incur certain cellular telephone charges or reduce cellular
6 telephone time for which Plaintiff and the Class members previously paid, and
7 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class
8 members were damaged thereby.

9 38. This suit seeks only damages and injunctive relief for recovery of
10 economic injury on behalf of the Class and it expressly is not intended to request
11 any recovery for personal injury and claims related thereto. Plaintiff reserves the
12 right to expand the Class definition to seek recovery on behalf of additional persons
13 as warranted as facts are learned in further investigation and discovery.

14 39. The joinder of the Class members is impractical and the disposition of
15 their claims in the Class action will provide substantial benefits both to the parties
16 and to the Court. The Class can be identified through Defendant's records or
17 Defendant's agents' records.

18 40. There is a well-defined community of interest in the questions of law
19 and fact involved affecting the parties to be represented. The questions of law and
20 fact with respect to the Class predominate over questions which may affect
21 individual Class members, including the following:

- 22 a. Whether, within the four years prior to the filing of this Complaint,
23 Defendant or its agents placed telephone calls without the recipients'
24 prior express consent (other than a telephone call made for emergency
25 purposes or made with the prior express consent of the called party)
26 to a Class member using any automatic telephone dialing system or
27 an artificial or prerecorded voice system, to any telephone number
28 assigned to a cellular telephone service;

- 1 b. Whether the equipment Defendant or its agents used to make the
2 telephone calls in question was an automatic telephone dialing system
3 as contemplated by the TCAP;
- 4 c. Whether Defendant or its agents systematically made telephone calls
5 to persons featuring an artificial or prerecorded voice;
- 6 d. Whether Defendant or its agents systematically made telephone calls
7 to persons who did not previously provide Defendant with their prior
8 express consent to receive such telephone calls;
- 9 e. Whether Plaintiff and the Class members were damaged thereby, and
10 the extent of damages for such violations; and
- 11 f. Whether Defendant and its agents should be enjoined from engaging
12 in such conduct in the future.

13 41. As a person that received at least one unsolicited telephone call to her
14 cell phone without prior express consent, Plaintiff is asserting claims that are typical
15 of the Class. Plaintiff will fairly and adequately represent and protect the interests
16 of the Class in that Plaintiff has no interest antagonistic to any member of the Class.

17 42. Plaintiff and the members of the Class have all suffered irreparable
18 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
19 action, the Class will continue to face the potential for irreparable harm. In addition,
20 these violations of law will be allowed to proceed without remedy and Defendant
21 will likely continue such illegal conduct. Because of the size of the individual Class
22 member's claims, few, if any, Class members could afford to individually seek legal
23 redress for the wrongs complained of herein.

24 43. Plaintiff has retained counsel experienced in handling class action
25 claims and claims involving violations of the Telephone Consumer Protection Act.

26 44. A class action is a superior method for the fair and efficient adjudication
27 of this controversy. Class-wide damages are essential to induce Defendant to
28 comply with federal law. The interest of Class members in individually controlling

1 the prosecution of separate claims against Defendant is small because the maximum
2 statutory damages in an individual action for violation of privacy are minimal.
3 Management of these claims is likely to present significantly fewer difficulties than
4 those presented in many class claims.

5 45. This class action is appropriate for certification because Defendant has
6 acted or refused to act on grounds generally applicable to the Class as a whole,
7 thereby requiring the Court's imposition of uniform relief to ensure compatible
8 standards of conduct toward the Class members and making final injunctive relief
9 appropriate with respect to the Class as a whole. Defendant's practices challenged
10 herein apply to and affect each of the Class members uniformly. Plaintiff's challenge
11 to those practices hinges on Defendant's conduct with respect to the Class as whole,
12 not on facts or law applicable only to Plaintiff.

13 **FIRST CAUSE OF ACTION**

14 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

15 **47 U.S.C. §§ 227 *ET SEQ.***

16 46. Plaintiff incorporates by reference all of the above paragraphs of this
17 Complaint as though fully stated herein.

18 47. Each such telephone call described herein was made using equipment
19 that, upon information and belief, had the capacity to store or produce telephone
20 numbers to be called, using a random or sequential number generator, and to dial
21 such numbers. By using such equipment, Defendant was able to in effect make
22 hundreds or thousands of phone calls simultaneously to lists of thousands of
23 consumers' wireless phone numbers without human intervention.

24 48. The foregoing acts and omissions by Defendant and its agents
25 constitute numerous and multiple negligent violations of the TCPA, including but
26 not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

27 49. As a result of Defendant's, and Defendant's agents', negligent
28 violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award

1 of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
2 § 227(b)(3)(B).

3 50. Plaintiff and the Class are also entitled to and seek injunctive relief
4 prohibiting such conduct in the future.

5 **SECOND CAUSE OF ACTION**

6 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
7 **TELEPHONE CONSUMER PROTECTION ACT**

8 **47 U.S.C. §§ 227 *ET SEQ.***

9 51. Plaintiff incorporates by reference the above paragraphs 1 through 43
10 inclusive, of this Complaint as though fully stated herein.

11 52. Each such telephone call was made using equipment that, upon
12 information and belief, had the capacity to store or produce telephone numbers to be
13 called, using a random or sequential number generator, and to dial such numbers.
14 By using such equipment, Defendant was able to in effect make hundreds or
15 thousands of phone calls simultaneously to lists of thousands of consumers' wireless
16 phone numbers without human intervention.

17 53. The foregoing acts and omissions by Defendant and its agents
18 constitute numerous and multiple knowing and/or willful violations of the TCPA,
19 including but not limited to each of the above-cited provisions of 47 U.S.C. §§ 227
20 *et seq.*

21 54. As a result of Defendant's knowing and/or willful violations of 47
22 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as
23 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47
24 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

25 55. Plaintiff and the Class are also entitled to and seek injunctive relief
26 prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court to grant Plaintiff and the Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA,
47 U.S.C. §§ 227 ET SEQ.**

56. As a result of Defendant's, and Defendant's agents', negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

57. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

58. Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL
VIOLATION OF THE TCPA, 47 U.S.C. §§ 227 ET SEQ.**

59. As a result of Defendant's, and Defendant's agents', willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

60. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

61. Any other relief the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: January 30, 2017

/s/ Alexis M. Wood

By: Alexis M. Wood

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